Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local Competition | ) | |
| Provisions in the Telecommunications Act | ) | CC Docket No. 96-98 |
| of 1996 | ) | |



# COMMENTS OF AT&T CORP.

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May 16, 1996

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5/16/96

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## SUMMARY

In this NPRM, the Commission has proposed to adopt explicit national rules that would implement Section 251's unbundling, interconnection, pricing, resale, and related duties on incumbent LECs in ways that will best effectuate the 1996 Act's objective of eliminating the economic and legal barriers to the nationwide introduction of exchange services competition. These rules would establish the minimum national requirements of Section 251 and would thus narrow the range of permissible outcomes in the separate Section 252 proceedings that are to transform the Section 251 duties into concrete interconnection and other agreements between incumbent LECs ("ILECs") and alternative LECs ("ALECs").

The threshold issue raised in this NPRM is whether it is permissible as a matter of law and appropriate as a matter of policy for the Commission to adopt such rules. The answer is that the Act supplants state law with federal requirements, and Section 251(d) mandates that the Commission now take all actions necessary definitively and preemptively to define Section 251's specific minimum requirements, subject only to deferential federal court review of the Commission's determinations.

Indeed, if explicit national rules were not now adopted, the state commission and other Section 252 proceedings could not effectively perform their separate, complex, and equally critical functions, and the Act's objective of implementing the necessary conditions for local competition on a national basis at the earliest possible time would be defeated. Moreover, in that event, the Commission would ultimately still be required to make the same determinations under the Act, but the Commission would then have to make those decisions in the context of the literally hundreds of separate piecemeal review, enforcement, and other proceedings which would be brought under Sections 208, 252(e), and 271 after the state

commission orders are entered, and these proceedings would be far costlier, more contentious, and less effective than the Commission's adoption of explicit rules now in this proceeding.

There are at least four sets of rules that the 1996 Act requires the Commission now to adopt. First, the Commission needs to adopt rules to implement the requirements of Sections 251(c)(2), (3) and (6) that the ILECs make interconnection and unbundled network elements available under terms and conditions that are effective, efficient, and nondiscriminatory. Because all or some of the ILECs' facilities cannot be readily reproduced, this requirement is critical to the development of competition with the retail services of the ILEC. The Commission should prescribe a minimum set of eleven such elements that must initially be made available to ALECs, and adopt rules that assure that ALECs obtain equal access to the ILECs mechanized ordering, provisioning, repair, and other systems. The ALECs similarly must have the unfettered ability to combine any or all of the network elements to provide whatever telecommunications services that the ALECs choose, and to order combinations of such elements.

Second, assuring a right to use unbundled network elements will be meaningless unless the Commission also adopts rules that implement the Act's requirement that the facilities be available at just and reasonable rates in ways that eliminate artificial economic impediments to competitive entry. The NPRM correctly recognizes that this requires that the Commission prescribe the use of a Long Run Incremental Cost (LRIC) standard. Because the question here is the appropriate pricing of network elements, not services, the Commission should prescribe the use of specific Total Service Long Run Incremental Cost (TSLRIC) standards which set prices based on the total forward looking incremental costs (including capital costs) of supplying the entire facility for use in the provision of retail services. That method would further assure that there are no or only de minimis common costs and thereby

will prevent the incumbent LECs' strategic allocations of common costs to block competition with their own retail services.

The firm of Hatfield Associates has developed a detailed TSLRIC model that is biased in favor of ILECs in some respects, but that otherwise applies the appropriate principles. This TSLRIC model has been applied to establish specific costs of unbundled network elements in the full array of different geologic, geographic, demographic, and other pertinent cost-causative conditions. This experience not only confirms that these TSLRIC standards can be readily administered, but also has generated specific results that can be used by state commissions and otherwise relied upon by the Commission in subsequent enforcement, review or Section 271 proceedings.

Third, Section 251(c)(4) establishes an alternative entry vehicle for ALECs by requiring incumbent LECs to "offer for resale at wholesale rates any telecommunications service that the carrier offers at retail." It is critical that the Commission adopt rules that will put an end to the incumbent LECs' extraordinary efforts to evade this straightforward requirement. Because this provision is intended to permit competition for the business of each retail customer of the ILEC, the Commission's rules should specify that the duty to establish wholesale rate applies to each retail rate and cannot be avoided by claiming that pricing plans, promotions, and the like are not services.

Similarly, the Commission's rules should assure that service resale is a commercially viable option by adopting rules that strictly enforce the requirement that wholesale rates be computed by subtracting marketing, billing, collection, and other avoided costs from each specific retail rate of the ILEC. In particular, the Commission's rules should preclude the ILECs from inflating the resulting wholesale rates by then adding the "costs" they incur by virtue of the existence of competition, their purported new "wholesale" costs, or other

such "offsets." The Commission may also wish to consider using a model to determine "avoided costs" for purposes analogous to those for which the Hatfield model can be used in determining network element prices.

Fourth, the Commission has correctly proposed the adoption of rules that would define the ILECs' Section 251(c)(1) duty to negotiate the foregoing arrangements in good faith. For example, it is important to declare that it is a violation of this duty for ILECs to refuse to provide cost information or the agreements that have been entered into with other parties to the firms with which the ILECs are negotiating.

In a similar vein, the Commission should adopt rules that prevent SNET and other ILECs who serve major metropolitan areas or who have hundreds of millions of dollars of annual revenues from using the statute's narrow "rural exemption" effectively to "opt out" of their duties under Section 251. Otherwise, the Act could be negated in the case of all the non-BOC LECs who do not have any incentives to comply with Section 251.

Finally, while the adoption of the foregoing rules would eliminate some of the most significant impediments to the nationwide introduction of exchange competition and --critically important -- these rules are but one of the essential steps in fulfilling the promise of the 1996 Act. The attainment of its broad procompetitive objectives equally requires parallel reforms in the Commission's Part 69 access charge rules, for local competition will never develop and interLATA and intraLATA toll competition will be thwarted -- so long as access is priced above its economic cost. While the NPRM (incorrectly, in AT&T's view) has provisionally decided that access reform is outside the scope of this Section 251 proceeding, the NPRM at least recognizes that this reform nonetheless must occur forthwith -- and in all events before Section 251 (and the Act in general) can be fully implemented.

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## COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Notice Of Proposed Rulemaking released April 19, 1996 ("NPRM"), AT&T submits these comments on the rules necessary to implement the duties imposed on incumbent local exchange carriers ("incumbent LECs" or "ILECs") by Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

## INTRODUCTION

In its NPRM, the Commission has tentatively concluded that it should adopt explicit national rules to implement Section 251's interconnection, unbundling, pricing, resale, and related requirements in the ways that will "most quickly and effectively" promote the 1996 Act's "new national policy" of eliminating the economic and legal barriers to the development of local exchange competition. NPRM, ¶¶1-3, 25-35. For example, such rules not only would define the minimum set of unbundled network elements but also would prescribe the pricing standards that should assure that the elements are offered at the prices based on economic cost that make competitive entry possible.

AT&T applauds these proposals. The adoption of such rules is necessary to overcome artificial economic impediments to the provision of competitive exchange services and would thus constitute a major step in the implementation of the 1996 Act.

As significant as these rules would be, however, they simply could not, standing alone, fulfill the competitive promise of the 1996 Act. That objective equally requires parallel reforms of the access charges that incumbent LECs assess on interexchange carriers. While the NPRM provisionally (and, in AT&T's view, erroneously) indicates that comprehensive reform of the Commission's Part 69 access charge rules is not required by Section 251(c)'s terms,[1] AT&T is gratified that the NPRM recognizes that access charges must be reformed soon. The reality is that implementation of the Act's broad procompetitive objectives cannot be realized so long as access charges exceed cost, and so long as ILECs thus retain the ability and incentive to use above-cost access charges to effect price squeezes against interexchange carriers who compete with ILECs' intraLATA or interLATA toll services.

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[1] Section 251(c)(2) expressly applies to interconnection for the routing of the exchange access services that interexchange services incorporate into their services, and Section 251(c)(3) independently requires the unbundled provision of any network elements ordered by any carrier. In this regard, while the NPRM correctly concludes that interexchange carriers can obtain unbundled network facilities (e.g., dedicated transport or local switching) and use them exclusively to originate or terminate long distance calls, the NPRM overlooks that Section 3(45) of the Act also defines network elements to include the capabilities and functionalities of the facilities. Because service elements under ILEC's existing access service tariffs are simply capabilities and functionalities of ILEC facilities, Section 251(c)(3) of the Act requires that access now be provided at cost-based rates. There is nothing remotely to the contrary in Section 251(g) which maintains only existing equal access and nondiscrimination requirements of the MFJ, the GTE Decree, and the Commission Rules.

## I. THE COMMISSION HAS THE RIGHT AND THE DUTY TO ADOPT THE EXPLICIT NATIONAL RULES THAT WILL BEST EFFECTUATE THE ACT'S PROCOMPETITIVE GOALS.

The NPRM has raised a threshold issue both at the outset (¶¶25-35) and in its discussion of each separate subsidiary issue under Section 251 (e.g., ¶¶47, 50-51, 61, 68, 79, 89, 234). It is the propriety of explicit national rules that would establish the minimum national requirements that best effectuate the Act's purposes and that would thereby "narrow the range of permissible outcomes" in the state commission and other proceedings that will transform the obligations of Section 251 into concrete and binding interconnection arrangements. NPRM, ¶¶25-35.

The answer is that the Act unequivocally establishes that the Commission has not only the authority but also the statutory duty to adopt such regulations in this proceeding. Indeed, if the Commission were to fail to do so, it would impose immense costs, and defeat the Act's objective of achieving the uniform national implementation of Section 251's fundamental requirements at the earliest possible time. Further, the Commission would still then be required to make the same (or more complex) determinations in connection with piecemeal review, enforcement, and other proceedings that would follow entry of state orders, and those decisions by the Commission would be both vastly more costly and contentious and less effective. These points follow from (1) the Act's terms, (2) its structure, and (3) the nature of the states' separate role in its implementation.

### A. Explicit Minimum National Rules Are Required By The Act's Terms.

The overriding factor is that the 1996 Act adopts a "new national policy" and federal "regulatory paradigm" for the provision of the local services that have been state franchised monopolies in 35 states and characterized (at best) by trivial actual competition in the remaining 15. NPRM, ¶2. In particular, the 1996 Act ends the balkanized system in which the determination of

whether local service competition will occur is committed to the sole discretion of some 51 different state agencies and laws by adopting comprehensive federal requirements that are intended to eliminate both legal entry barriers (§ 253) and the artificial economic impediments that incumbent LECs have been permitted to impose (§§ 251 & 252).

In this regard, while any willing and able state commissions have been assigned arduous and critically important roles in implementing § 251's requirements (see § 252), the interpretation and definition of the 1996 Act's minimum requirements is inherently a matter for federal authorities. The Act has explicitly assigned this role to the Commission in this proceeding, subject only to the federal courts' deferential review of any reasonable Commission regulations. See Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984)).

Foremost, Section 251(d) provides that "within 6 months after the date of enactment, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this Section." See also 47 U.S.C. § 154(i)). Because "'shall' . . . is the language of command" (see MCI v. FCC, 765 F.2d 1186, 1191 (D.C. Cir. 1985)), this language established that the minimum national content of Section 251(c)'s interconnection, unbundling, pricing, resale, and related requirements are to be defined by the Commission now.

Further, the terms of the Act otherwise make it explicit that these regulations are to preclude state-by-state variations in the definition of the Act's minimum requirements in the § 252 proceedings and otherwise. The 1996 Act was enacted against the background of the settled rule that federal agency regulations will preempt any inconsistent state policies unless the federal statute

provides otherwise.[2] Section 251(d)(3) makes it explicit that the Commission will "prescrib[e] and enforc[e]" regulations that will "preclude the enforcement of any regulation, order, or policy of a State commission" that establish "access and interconnection" obligations that are determined to be "[in]consistent with the requirements of [Section 251]" or that would "substantially prevent implementation of the requirements of this section [251]" or the "purposes of this part" of the 1996 Act.[3]

Accordingly, any Commission regulation that reasonably implements the standards of Section 251 (and that is not waived by the Commission, see infra), will itself preclude the operation of inconsistent state regulations, irrespective of whether the separate preemptive provisions of Section 253 of the Act are also satisfied (as they generally would be).[4] That is why Section 252(c)(1) separately imposes a duty on state commissions to assure that any nonvoluntary

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[2] Fidelity Federal Savings and Loan Assoc. v. de la Cuesta, 458 U.S. 141, 152-154 (1982); City of New York v. FCC, 467 U.S. 57, 64 (1988); Oklahoma Natural Gas v. FERC, 28 F.3d 1281, 1283 (D.C. Cir. 1994).

[3] In particular, the only limitation on the Commission's preemptive powers is that Section 251(d)(3) provides that the Commission shall not preclude the enforcement of state interconnection and access obligations that do not have these characteristics. Conversely, when the Commission determines that practices are inconsistent with the Act or will substantially impair its purposes or implementation, state laws that permit or require these practices are preempted by the Commission's regulations, and courts will defer to any reasonable application of Section 251's terms by the Commission. See Chevron, supra, 467 U.S. 837.

[4] To the extent the NPRM suggests otherwise (¶ 22), it has overlooked the provision of Section 251(d) and the rule of Fidelity Federal Savings and its progeny (see n.2, supra). In this regard, while there is substantial overlap between Sections 251 and 253, the separate function performed by Section 253 is to invalidate state franchising requirements and other laws that erect legal (not economic) barriers to entry and that do not satisfy the narrow exceptions set forth in Sections 253(b) and (c). To be sure, a state regulation that permits or requires anticompetitive LEC conduct that is inconsistent with the Commission's regulations under § 251 will generally also be invalid under Section 253. However, given the clear invalidity of such a law under Section 251, there would be no reason to consider the applicability of Section 253.

interconnection arrangement complies with the Commission's access and interconnection regulations under Section 251(d).

For these reasons, the NPRM is also correct in its tentative conclusion (¶¶39-40), that the provisions of Section 2(b) of the Act have no relevance to the Commission's authority to promulgate the rules that would best implement the Act's local competition provisions. While Section 2(b) provides that no provision of the Act is to be "construed" to give the Commission jurisdiction over facilities or services "for or in connection with intrastate communication service" (47 U.S.C. § 152(b)), courts have uniformly held that Section 2(b) can not be read to negate the Commission's express regulatory authority under other provisions of the Act,[5] and Section 251 gives the FCC explicit authority to prescribe and enforce preemptive rules that are necessary to achieve the Act's purpose of developing local services competition. Moreover, the explicit provisions of the subsequently enacted Section 251 would impliedly repeal the provisions of Section 2(b) even if they could otherwise be found applicable. See NPRM, ¶39.

B. Both The Structure Of The Act And Its Other Provisions Presuppose The Adoption Of Explicit National Rules By August 1996.

Further, the Commission's adoption of explicit rules is not merely required by the terms of Section 251(d) and 252(c). It is also a precondition to the effective operation of the state commission and other proceedings authorized by Sections 252 and 271 of the Act. Indeed, a failure

[5] For example, courts have held that Section 2(b) cannot be read to nullify the Commission's explicit authority under Section 2(a) and the provisions of Sections 201 to 205 of the Act to establish rules governing interstate services, even when those rules unavoidably preempt inconsistent state regulations directed at intrastate services or the facilities that used to provide them. California v. FCC, 39 F.3d 919, 931-33 (9th Cir. 1994); PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1990); NARUC v. FCC, 746 F.2d 1492 (D.C. Cir. 1984); see Louisiana PSC v. FCC, 476 U.S. 355, 375-76 n.4 (1986).

to adopt such rules now would not only prevent the § 252 proceedings from achieving their intended objects, but also would require the Commission to adopt detailed minimum standards on a piecemeal basis in separate enforcement proceedings that would occur after the state commission proceedings end.

For example, one major premise of Section 252 is that negotiations between incumbent LECs and their competitors may produce mutually satisfactory arrangements. However, these negotiations will be exercises in futility -- as they have been for the past three months -- unless the Commission establishes minimum standards under Section 251 that will effectuate the Act's purposes and radically narrow the range of permissible outcomes in the Section 252 proceedings.

The reality is that all incumbent LECs have the ability and overwhelming incentives to refuse to accept any arrangement that would permit effective competition with their monopoly exchange and exchange access services unless they believe that less advantageous arrangements are nearly certain otherwise to be imposed. Those incentives are patent in the case of GTE, SNET, and the other non-BOC LECs who collectively serve some 20% of the nation's access lines, but who have interLATA authority today and who therefore would never have any reason to seek to demonstrate compliance with Section 251 in order to obtain future rights for themselves. Further, while BOCs have theoretical incentives to comply with Section 251 (compare § 271(a) & (c)), their behavior has been no different than other LECs to date, possibly because the BOCs recognize that they would face other difficulties in making the showings mandated by Section 271's separate requirement that their provision of in-region interLATA services is in the public interest. Indeed,

the negotiations with the BOCS to date have been characterized by stonewalling, refusals to provide necessary information and conduct inconsistent with the law that only explicit regulations from the Commission could end.[6]

Moreover, if and when voluntary negotiations fail, the state arbitration and other proceedings under Section 252 will also be unable to achieve their intended purposes if the minimum federal requirements have not first been established by Commission regulations. As noted below, Section 252 requires state commissions to perform separate and complementary tasks of enormous complexity, and § 252 can contemplate the completion of these proceedings within ten months of the Act's effective date[7] only because the Act also requires the promulgation of explicit national rules that will afford definitive guidance for these state proceedings within six months of that effective date.

More fundamentally, if the determinations of the minimum requirements of Section 251 were initially to be made in 50 different states and the District of Columbia, it would recreate the balkanization, delays, and incessant litigation that the Act was intended to end. In that

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[6] For example, despite the clarity of the Section 251(c)(4) obligation to "offer for resale at wholesale rates any telecommunications service that the [incumbent LEC] carrier offers at retail," some ILECs, including Bell Atlantic and GTE, have failed to identify the services that they would allow to be resold. Ameritech and others have refused to provide existing cost studies that underlie services which must be resold.

[7] Specifically, Section 252 provides that, in the event there is no voluntary agreement, the state commissions must arbitrate disputes within nine months of the commencement of negotiations (§ 252(b)(4)(C)) and approve the arbitrated agreement within 30 days. § 252(e)(4). Those arbitration proceedings further cannot begin until there have been between 135 and 160 days of negotiations, and the Act provides that a non-petitioning party has 25 days to respond to a petition (§§ 252(e)(1)&(3)), such that the state commission can have less than three months to conclude the arbitration. Similarly, if the ILEC instead files a statement of the general terms and conditions under which interconnections will be provided, the Act provides that the state commissions must approve or disapprove the proposal within 60 days. § 252(f)(3).

event, the requirement that alternative LECs litigate the minimal terms and conditions of entry in 51 or more separate state proceedings would itself impose transaction and other costs that would dramatically increase the costs of entry, contrary to the purposes of the 1996 Act. Further, the net result would unavoidably be substantial variations both among the individual state commissions that genuinely favor competition and those that do not. The resulting "patchwork" of different and inconsistent terms and conditions for interconnection and different and inconsistent rates and rate structures would dramatically increase the capital and other costs of entry in each state in the nation. In particular, as the NPRM notes, local entry decisions will be made on multistate and national bases, and, in these events, new entrants would have to have separate network architectures, interconnection arrangements, pricing plans, and marketing strategies for each state that they enter.

Notably, while a failure to adopt the necessary rules now would delay and frustrate the implementation of the new national policy in each of the foregoing ways, it also would not reduce, but would ultimately increase the overall burdens on the Commission. In that event, the Commission would inevitably be required to define Section 251's minimum requirements after the state proceedings were concluded, and the Commission would then do so not in a single comprehensive proceeding, but on a piecemeal and uncoordinated basis in literally scores or hundreds of separate enforcement proceedings that would be brought after a state commission approved or ordered an interconnection arrangement. Indeed, there are at least three separate types of such post hoc proceedings that would be nearly certain to occur in the absence of explicit regulations.

First, Section 252(e)(6) provides that a state commission determination is reviewable in "an appropriate district court" (i.e., one with personal jurisdiction over the individual state commissioners), which likely means that at least one federal district court review proceeding will be instituted in each state where determinations are made. As the NPRM notes (¶31), if this

Commission has promulgated explicit rules, the Commission's interpretation of Section 251 should be treated as binding by the federal district court in any such proceeding.

By contrast, a state commission's interpretation or application of federal law is entitled to, and will receive, no deference by a federal court. Even if the Commission were to decline to issue explicit rules now, federal courts are nearly certain to refer these issue of federal policy to the Commission under the doctrine of primary jurisdiction.[8] That is especially so if -- as is nearly certain -- some party had instituted one of the other possible proceedings discussed below, for each would be brought at the Commission and primary jurisdiction referrals would then be required to prevent inconsistent determinations under § 251.[9]

Second, Sections 206 and 208 give any person the right to file a private complaint at the Commission that charges a common carrier with violating any provision of the Act, including the duties that Section 251 expressly imposes on ILECs.[10] As the NPRM recognizes, the volume

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[8] See Reiter v. Cooper, 507 U.S. 258 (1993); Mical Comm., Inc. v. Sprint Telemedia, Inc., 1 F.3d 1031 (10th Cir. 1993); Allnet Comm. Servs. v. National Exchange Carrier Ass'n, 965 F.2d 1118 (D.C. Cir. 1992). That is a powerful additional reason for the Commission to issue detailed regulations now.

[9] See, e.g., United States v. Western Pacific R. R., 352 U.S. 59, 64 (1956).

[10] Because Sections 206 and 208 allow complaints against carriers whenever there is claimed violation of any provision of the Act, AT&T disagrees with any suggestion that complaints could not be brought while proceedings were pending in state commissions or in federal courts. At the same time, the Commission would have a basis to hold private complaints in abeyance pending the outcome of the latter proceedings if it had adopted explicit regulations that the state commissions or the federal district court on direct review could apply. However, absent such clear regulations, the federal district court would be permitted and seemingly required to refer the issues of the incumbent LEC's compliance with Section 251 to the Commission under the doctrine of primary jurisdiction.

of such complaints will likely be radically magnified if the Commission does not adopt regulations that define the requirements of Section 251 with specificity.[11]

Third, as the NPRM notes, BOC applications for interLATA authority are to be filed at the Commission and require it to determine, among other things, whether the BOC has complied with Section 251. Quite apart from the fact that the pendency of such proceedings, too, would assure that the referral of any federal district court complaints to the Commission if there were no explicit national rules, the § 271 proceedings would be conducted at far lower costs if the fundamental minimum requirements of Section 251 are determined in rules now.

In short, the overriding reality is that the Commission will end up making detailed determinations of the minimum requirements of Section 251 under any scenario, and the reason that Congress required the adoption of binding national rules in this proceeding is to avoid the procedural chaos, costly inefficiencies, and interference with the Act's objectives that would result if fundamental determinations of federal policy were splintered among separate state proceedings, which would be followed by literally hundreds of overlapping review and enforcement proceedings. By now adopting explicit national rules, the Commission will also be able to concentrate its scarce enforcement resources on any genuinely open issues, for there would be no need for primary jurisdiction referrals and no basis for § 208 complaints to the extent that § 251's requirements had been made explicit by Commission rules.

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[11] In addition, Section 252(e)(5) of the Act provides that the Commission may preempt a state commission's jurisdiction in any proceeding under Section 252 in which a "state commission fails to carry out its responsibilities under this section." If there are not explicit Commission rules, dissatisfied litigants will be able to contend that restrictive state orders constitute a failure to discharge their responsibilities to assure compliance with Section 252 (and the absence of such rules may cause some states simply to decline to act at all within the statutory time periods).

C. Consideration of The States' Complementary Roles Underscores The Necessity Of Explicit National Rules.

The NPRM also raises the questions (e.g., ¶¶33, 51, & 68) of whether there may be state-specific variations in geographic, technological, and demographic conditions and how the Commission's rules should be crafted to permit states to accommodate such factors in making their determinations under Section 252. These and related considerations confirm the need for explicit national rules.

The answer to the NPRM's question is that the Commission's rules must be sufficiently flexible to permit the relevant differences to be taken into account. For example, the TSLRIC standards that should be adopted to determine the economic costs of facilities and functionalities should, and will, inherently allow price differences that reflect the cost differences that result from variations in geographic or demographic conditions. Similarly, to the extent that particular interconnection, unbundling, or collocation requirements depend on the existence of particular technological conditions, the rules should and inherently would provide the flexibility to order different outcomes in other conditions.

In this regard, AT&T is not aware of any state-specific variations in any of the foregoing conditions. While there are many areas of the country in which the incumbent LEC networks use different equipment or architectures than do, for example, urban and suburban networks in New York City, those differences reflect variations in geography, population density, or other factors that are not unique to any one state, but that are characteristics shared by many areas in many different states. These variations therefore readily can be and should be accommodated in the national rules that the Commission adopts. National rules should assure that the minimum terms and conditions, and the rates and rate structures, for interconnection

arrangements will be substantially the same in any two exchange areas with the same demographic and geographic features, irrespective of the particular state in which the exchanges are located.

At the same time, to the extent there are any unique conditions that are specific to an individual state or that otherwise are not considered in the formulation of the Commission's rules, individual states or LECs can then follow the established procedure to obtain waivers of the Commission's rules (see 47 C.F.R. § 1.3; WAIT Radio v. FCC, 418 F.2d 1153, 1156 (D.C. Cir. 1969)). Indeed, in view of the tight deadlines that apply to Section 252 proceedings, the Commission should both make special efforts to formulate rules that can be readily applied to all known conditions and adopt streamlined proceedings to resolve waiver requests to the extent there nonetheless are in fact unforeseen and aberrant conditions in specific states.

Finally, some incumbent LECs have lobbied states to oppose the Commission's adoption of the necessary and appropriate federal regulations by claiming that state commissions would somehow then be relegated to performing only minor and ministerial roles. These claims are wrong. The adoption of explicit national rules that establish the essential minimum conditions for the national provision of competitive exchange services is merely one necessary condition to the implementation of the Act's objects. The separate actions that states will then take under Section 252 of the Act are of immense importance and complexity, requiring the exercise of skill, expertise, and judgment by each state commission that is willing and able to undertake these tasks.

The determinations that these state commissions will make are many and varied. The application of even the most explicit of the proposed Commission regulations will require a state commission to employ not just its knowledge of the geographic, technological and demographic characteristics of each exchange in its state, but also to make determinations of the most efficient or feasible network architecture, the costs of the appropriate technologies, and the foreseeable levels of demand in each area. Further, other Commission rules will establish general

standards -- e.g., parity in use of mechanized ordering, installation, and related systems -- and state commissions will have to determine the most appropriate ways to implement these general standards.

More fundamentally, the state commissions can take any actions that are not inconsistent with the requirements of Section 251 and the Commission's regulations or the Act's purposes, and the proposed rules would establish only minimum requirements: e.g., the core set of basic network elements that appear necessary today and must be initially offered by incumbent LECs. The individual prospective entrants will have different and unique needs, and the state commissions will soon be inundated with requests for additional network elements or sub-elements and numerous other arrangements that go beyond any minimal requirements that are specified by the Commission's regulations. For all these reasons, the principal focus of activity in the implementation of the Act will be the state commissions who are willing and able to carry out the responsibilities of Section 252, no matter how explicit the regulations of the Commission. The Commission should thus discharge its duty to establish the specific rules that are required to carry out the Act's purposes of fostering exchange competition with respect to each of the separate requirements of Section 251(c) of the Act.

## II. THE COMMISSION SHOULD ADOPT EXPLICIT RULES TO IMPLEMENT THE ACT'S REQUIREMENTS RELATING TO INTERCONNECTION, ACCESS TO NETWORK ELEMENTS, AND COLLOCATION.

Section 251(c) imposes several key duties upon ILECs that are intended to make it possible -- for the first time -- to open local telecommunications markets to effective competition. These duties include the ILECs' obligations to permit requesting carriers to interconnect with their networks at any technically feasible point (Section 251(c)(2)); to make unbundled network elements available at any technically feasible point in a manner that allows requesting carriers to provide their own telecommunications services (Section 251(c)(3)); and to offer physical collocation to requesting carriers at all ILEC premises (Section 251(c)(6)).

This part of AT&T's comments addresses several issues raised by these interrelated statutory requirements. First, the Commission correctly concludes (¶77) that it should define a minimum set of network elements that ILECs must make available for unbundling. AT&T has previously identified eleven such elements, and Section A below (together with AT&T's prior submission to the Commission) describes the competitive and technical rationales supporting their unbundling and responds to specific issues raised about those elements in the NPRM. Second, in order for unbundling to provide ALECs with meaningful competitive opportunities, the 1996 Act further requires that ALECs have the flexibility to combine and interconnect with such elements in the manner of their choosing so as to create marketable telecommunications services. The need for rules to implement this requirement is addressed in Section B. Section C then addresses the need for a uniform definition of "technical feasibility" and the principles that should be reflected in that definition.

Section D addresses a fourth issue that is also critical to the development of local competition: the need for uniform obligations on ILECs to facilitate nondiscriminatory

electronic or other efficient interfaces between ALECs and the ILEC operational support systems that perform the ordering, provisioning, maintenance and billing functions, both for network elements and services offered for resale. Without a national requirement of parity between ALECs and ILECs in these fundamental aspects of service, ILECs will be able to foreclose competition through their bottleneck control over these systems as they have foreclosed competition in the past through their bottleneck control over the local networks.

The final subsections address two other significant interconnection issues. Section E describes some of the ways in which the Commission's prior physical collocation rules should be expanded to reflect the far broader interconnection rights the 1996 Act establishes. Section F responds to the Commission's questions regarding the relationship of the Act's interconnection provisions to CMRS providers.

### A. The Commission Should Identify At Least A Minimum Set Of Eleven Network Elements That ILECs Must Offer On An Unbundled Basis.

Section 251(c)(3) requires ILECs to provide requesting carriers access to all network elements "on an unbundled basis at any technically feasible point of interconnection." The Commission recognizes (NPRM, ¶75) that such unbundling is critical to the development of local competition, because it "allow[s] new entrants to enter the LEC's market gradually" and to "build their own facilities only where it would be efficient." The NPRM thus correctly concludes (¶77) that Section 251(d)(2) requires "the Commission to identify network elements that incumbent LECs should unbundle" and make available under Section 251(c)(3). The Commission proposes (id.) to discharge this duty by "identify[ing] a minimum set of network elements" that ILECs must unbundle now, and establishing future unbundling requirements "as service, technology and the

needs of competing carriers evolve." This approach is fully consistent with, and contemplated by, other provisions of the Act.[12]

As the NPRM (¶92) acknowledges, AT&T has previously supported the unbundling of at least 11 network elements.[13] These elements represented AT&T's best current analysis of the minimum degree of unbundling that would be needed on a nationwide basis to permit the emergence of local competition. As explained in detail below, the unbundling of these 11 elements is practical, technically feasible and necessary to develop competitive markets for local telecommunications services.[14] The Commission (¶77) correctly recognizes, however, that the initial identification of a minimum set of unbundled network elements is not the end of the process, and that specific carrier needs, market developments or technological changes may create additional circumstances warranting further unbundling. The Commission thus cannot expect to generate an exhaustive list of potentially unbundled elements, but should focus here on defining the "baseline" amount of unbundling that is necessary pursuant to Section 251(c)(3) to guide carriers in negotiations, the states in arbitrations, and the Commission in its review of checklist compliance.

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[12] Sections 271(c)(1)(B)(i) and (ii) expressly provide that BOCs must offer "interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)" and "nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1)." Collectively, these provisions leave no doubt that Congress expected the Commission to identify specific network elements for unbundling, and that such requirements would become part of the Section 271 test for BOC in-region entry.

[13] See AT&T letter to R. Keeney, Chief, Common Carrier Bureau, March 21, 1996 ("AT&T ex parte"), referenced at n.126 of the NPRM. A pictorial representation of these elements is set forth in Appendix A hereto. The technical standards referenced in that Appendix are provided for illustrative purposes only, to demonstrate the technical feasibility of each element, based on currently available standards. They are not intended to imply that these are the only -- or even the best -- technical specifications for such interconnections.

[14] No definition of network elements is complete -- and network elements cannot be considered to be practically available -- unless ILECs also provide the operational interfaces needed to order, provison, maintain and bill for such elements (see Part D below).